

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and)	
Commonwealth Electric Company, d/b/a NSTAR)	
Electric, for Approvals relating to the Renegotiation)	
of Purchase Power Agreements with)	
Northeast Energy Associates Limited Partnership)	
)	

D.T.E. 04-85

**REPLY TO NSTAR ELECTRIC’S MOTION TO STRIKE THE APPENDICES IN THE
ATTORNEY GENERAL’S REPLY BRIEF**

I. INTRODUCTION

On December 20, 2004, Boston Edison Company and Commonwealth Electric Company, d/b/a NSTAR Electric, (the “Company”) submitted a Motion to the Department of Telecommunications and Energy (the “Department”) to strike the appendices in the Attorney General’s Reply Brief or, in the alternative, afford no weight to those appendices. On December 20, 2004, the Hearing Officer allowed parties to respond to the Company’s Motion by December 22, 2004. In accordance with the Hearing Officer’s ruling, the Attorney General submits his reply to the Company’s Motion. Not only should the Department not strike from the record Appendices A through D of the Attorney General’s Reply Brief, it should consider the appendices with equal weight as any other information provided in this proceeding.

II. ARGUMENT

In its Motion to Strike, the Company claims that Appendices A through D of the Attorney General’s Reply Brief are extra-record evidence. Company’s Motion, p. 2. The Appendices are not extra-record evidence since the calculations in the Appendices are based on record evidence provided

by the Company. *See* Exh. AG-1-36, AG-1-36 (Supplemental), Exh. AG-1 (FERC Testimony of James Daly) and RR-AG-3. The Appendices are derived from data from those exhibits and the Company's own estimated cost of ISO's Locational Installed Capacity ("LICAP") proposal (Exh. AG-1). The Appendices use this data to illustrate the potential value that even the Company's witness, Mr. Hevert, acknowledges has not been captured by relying solely on the forecasts in the Henwood Fall 2004 Electricity and Fuel Price Outlook ("Henwood"). RR-AG-3. By including the Appendices, the Attorney General is merely presenting a reasonable position based on the record evidence and the Company cannot request this position be stricken because it does not conform with its own position.

The Company also claims that Appendices B through D are not related to this proceeding and should be stricken. Company's Motion, p. 2, n. 1. The Hearing Officer, however, incorporated by reference the evidentiary records of the Pittsfield docket, D.T.E. 04-60; the MASSPOWER docket, D.T.E. 04-61; the Ocean State Power docket, D.T.E. 04-68; and the Dartmouth docket, D.T.E. 04-78. Tr. 1, p. 6. This is not extra-record evidence nor unrelated to the current proceeding. The Attorney General appropriately included the analysis for the other proposed buyouts in the Appendices and it is appropriate for the Department to consider this information.

The Company further claims that the calculations in the Appendices are flawed. Company's Motion, p. 2. On October 27, 2004, the Attorney General originally requested, in his First Set of Information and Document Requests, a complete version of the Fall 2004 Henwood forecast. On November 15, 2004, the Company filed only a portion of the Henwood forecast, the market price section. The Company did not file the complete Henwood report until November 17, 2004, the day before the evidentiary hearing. Since the Company did not provide this information until the last

minute, the Attorney General did not have adequate time to fully review if the Henwood forecast included the ISO proposed LICAP values and was forced to explore this important issue in the evidentiary hearing and by making a record request.¹ See Tr. 1, pp. 112-118. The Attorney General used the best record evidence available to him when calculating the Appendices and are not based on faulty logic.

The Company is trying to present extra-record evidence in its Motion to Strike and in its Response to the Attorney General's Appeal of the Hearing Officer's December 2, 2004 Ruling by claiming the Attorney General has double-counted the effect of inflation on the LICAP rates because Mr. Hevert confirmed that the values in Exh. AG-1 were presented in nominal dollars, not real dollars as the Attorney General assumed in his Appendices. Company's Motion, pp 3-4 and Company's Response to the Attorney General's Appeal of the Hearing Officer's December 2, 2004 Ruling, p. 8. There is no record evidence that Mr. Hevert confirmed any LICAP values with the witness sponsoring the FERC Testimony, Mr. Daly. Indeed, the Company first mentioned this confirmation in its Response to the Attorney General's Appeal. It is disingenuous for the Company to now claim that the Attorney General made faulty assumptions when he was using the best available record evidence.² Not only should the Department not strike the Appendices, it should consider the analysis therein with as much weight as any other information in this proceeding.

¹ The Fall 2003 Henwood forecast does not address LICAP or capacity prices in New England. See Exh. AG-1-30.

² The Company claims the Attorney General erred in not converting the ICAP prices (\$/kW) to \$/kWh. Company's Motion, p. 4. Both the Henwood forecast and Mr. Daly's FERC testimony values are in terms of kilowatts. See Exh. AG-1-36 (Supplemental) and Exh. AG-1. Mr. Hevert is the one who made the questionable conversion to \$/kWh, even though he admitted he did not understand how Henwood had incorporated ICAP values into the market prices. See RR-AG-3 and Tr. 1, p. 109. The Attorney General was attempting to clarify the basis of this conversion in his follow-up questions to RR-AG-3, which was disallowed by the Hearing Officer on December 2, 2004.

III. CONCLUSION

For these reasons, the Department should deny the Company's Motion to Strike and not grant the Company's request for alternative relief.

Respectfully submitted,

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